

Veterans' Preference in Reduction in Force

Veterans have advantages over nonveterans in a reduction in force (RIF). Also, special provisions apply in determining whether retired military members receive preference in RIF and whether their military service is counted. This chapter deals with RIF in the competitive service, but not all, of the provisions apply in the excepted service.

Eligibility for Veterans' Preference in RIF

Determinations of veterans' preference eligibility are made in accordance with the information under **Preference in Appointments** in Chapter 2, except that a **retired member** of a uniformed service must meet an additional condition to be considered a preference eligible for RIF purposes. This condition differs depending on the rank at which the individual retired from the uniformed service. Uniformed service as defined in 5 United States Code (U.S.C.) 2101 means the Armed Forces, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration.

Retirees below the rank of major (or equivalent) get preference if:

- Retirement from the uniformed service is based on disability that either resulted from injury or disease in the line of duty as a direct result of armed conflict, or was caused by an instrumentality of war and was incurred in the line of duty during a period of war as defined in section 101(11) of title 38, U.S.C. "Period of war" includes World War II, the Korean conflict, Vietnam era, the Persian Gulf War, or the period beginning on the date of any future declaration of war by the Congress and ending on the date prescribed by Presidential proclamation or concurrent resolution of the Congress; **or**
- The employee's retired pay from a uniformed service is not based on 20 or more years of full-time active service, regardless of when performed but not including periods of active duty for training; **or**
- The employee has been continuously employed in a position covered by the 5 U.S.C. chapter 35 since November 30, 1964, without a break in service of more than 30 days.

Retirees at or above the rank of major (or equivalent) get preference if they are disabled veterans as defined in 5 U.S.C. 2108(2) (includes XP, CP, and CPS) and also meet one of the criteria above for a person retired below the rank of major.

A preference eligible who at age 60 becomes eligible as a reservist for retired pay under 10 U.S.C. chapter 1223 (previously chapter 67) and who retires at or above the rank of major (or equivalent) is considered a preference eligible for RIF purposes at age 60 only if he or she is a disabled veteran as defined in 5 U.S.C.

2108(2) (includes categories XP, CP, and CPS). Receipt of retired pay under chapter 1223 meets the requirement that retired pay not be based on 20 or more years of full-time active service. Eligibility for retired reservist pay occurs at age 60; up to that time a reservist is not considered a retired member of a uniformed service and, if otherwise eligible, is a preference eligible for reduction in force purposes.

5 U.S.C. 3501, 3502; 5 Code of Federal Regulations (CFR) 351.501

RIF Retention Standing

Employees are ranked on retention registers for competitive levels (groups of similar jobs) based on four factors: tenure, veterans' preference, length of service, and performance.

First they are placed in Tenure Group I, II, or III, depending on their type of appointment. Within each group, they are placed in a subgroup based on their veteran status:

- Subgroup AD includes each preference eligible who has a compensable service-connected disability of 30 percent or more.
- Subgroup A includes all other preference eligibles not in Subgroup AD, including employees with derived preference (see Chapter 2).
- Subgroup B includes all employees not eligible for veterans' preference.

Within each subgroup, employees are ranked in descending order by length of their creditable Federal civilian and military service, augmented by additional service according to the level of their performance ratings.

When a position in a competitive level is abolished, the employee affected (released from the competitive level) is the one who stands the lowest on the retention register. Because veterans are listed ahead of nonveterans within each tenure group, they are the last to be affected by a RIF action.

Employees are not subject to a reduction in force while they are serving in the uniformed services. After return from active duty, they are protected from RIF action. If they served for more than 180 days, they may not be separated by RIF for 1 year after their return. If they served for more than 30 but less than 181 days, they may not be separated by RIF for 6 months.

5 U.S.C. 3502; 5 CFR 351.404(a), 351.606(a), and Subpart E

Assignment Rights (Bump and Retreat)

When an employee in Tenure Group I or II with a minimally successful performance rating is released from a competitive level within the competitive

area where the RIF takes place, he or she is entitled under certain circumstances to displace another employee with lower retention standing. The superior standing of preference eligibles gives them an advantage in being retained over other employees. These displacement actions apply to the competitive service although an agency may, at its discretion, adopt similar provisions for it excepted employees.

Bumping

An employee may bump in the same competitive area to a position **no more than three grades (or grade intervals)** lower than the position from which the employee is released that is held by an employee in a lower group or subgroup.

Retreating

An employee may retreat in the same competitive area to a position held by another employee with lower retention standing in the same tenure group and subgroup that is essentially identical to one **previously held** by the retreating employee and is **no more than three grades (or grade intervals) lower** than the position from which the employee is released.

A preference eligible with a **compensable service-connected disability of 30 percent or more** may retreat to a position **up to five grades (or grade intervals) lower**.

An employee with an unacceptable performance rating has no right to bump or retreat. An employee with a performance rating of minimally successful may retreat only to positions held by an employee with the same or lower rating.

Qualifications

In reviewing the qualifications of a preference eligible to determine assignment rights in a RIF, the agency must waive requirements as described under *Physical Qualifications* in Chapter 2. If the veteran involved has a 30 percent or more compensable disability, special procedures apply as described under *Disqualification of 30 Percent or more Disabled Veterans* in Chapter 2. OPM must approve the sufficiency of the agency's reasons to medically disqualify a 30 percent or more compensably disabled veteran for assignment to another position in a RIF.

5 U.S.C. 3502, 3504; 5 CFR Part 351, Subpart G, and Part 339

Appeal of RIF Actions

An employee who has been furloughed, separated, or demoted by RIF action has the right to appeal the action to the Merit Systems Protection Board except when a negotiated procedure must be used. Assignment to a position at the employee's same grade or representative rate is not appealable. Appeals must be filed during the period beginning on the day after the effective date of the RIF action and ending 30 days after the effective date. Time limits for filing a grievance under a negotiated procedure are contained in the negotiated agreement.

5 CFR 351.901, Part 1201

Reemployment Priority for Separated Employees

After a RIF, separated competitive service employees in tenure groups I and II are listed on the agency's Reemployment Priority List. The agency generally may not hire from most outside sources when qualified employees are on the List. In hiring from the List, preference eligibles receive preference over other employees. Excepted service employees separated by RIF receive similar priority in excepted employment.

5 U.S.C. 3315; 5 CFR Part 330, Subpart B, and Part 302